

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

November 13, 2009

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. CENT 2009-758-M
v.	:	A.C. No. 32-00580-194209
	:	
FISHER SAND & GRAVEL	:	
COMPANY	:	

BEFORE: Jordan, Chairman; Duffy, Young, and Cohen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006) (“Mine Act”). On August 21, 2009, the Commission received from Fisher Sand & Gravel Company (“Fisher”) a letter seeking to contest the citation that had given rise to a penalty assessment that may have become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

The Secretary submits that upon reviewing the records in this proceeding, she believes that the proposed penalty has not become a final order of the Commission. On August 12, 2009, the Department of Labor’s Mine Safety and Health Administration (“MSHA”) issued Proposed Assessment No. 000194209, which was received by Fisher on August 17, 2009. On August 21, 2009, Fisher sent the Commission a letter attempting to contest the citation that had given rise to the proposed penalty. On September 2, the Secretary contacted Fisher’s legal counsel and informed him that Fisher had until September 16, 2009, to either contest or pay the proposed penalty. On September 15, 2009, Fisher filed a timely contest of the proposed penalty, and the proceeding has been assigned Docket No. CENT 2009-831-M.

Having reviewed Fisher's request and the Secretary's response, we find the request to reopen to be moot. Fisher has timely contested the proposed penalty assessment, and therefore it did not become a final order of the Commission. This case shall proceed pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

Mary Lu Jordan, Chairman

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

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